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JOURNAL

OFFICE OF LEGISLATIVE COUNSEL

Tuesday - 19 March 1974

25X1

1. [] Called Clark McFadden, Senate Armed Services Committee staff, to alert him to Jack Anderson's article in today's Washington Post concerning Senator Baker's, Vice Chairman, Select Committee on Presidential Campaign Activities, investigation of CIA. I also told him of Senator McClellan's letter to Senator Ervin concerning the transcripts of Agency witnesses and in response to his question explained to McFadden that McClellan had sent Appropriation Committee transcripts of Agency witnesses who appeared in May 1973 to Senator Ervin for the Select Committee's use and a request to advise McClellan of any developments uncovered by the Select Committee which fell into the oversight responsibility of the Appropriations Committee. McFadden was thankful we were keeping him up-to-date and said he was still very busy on the military surveillance hearings.

25X1

2. [] Called Jim Oliver, International Division, OMB, in line with our understanding of keeping them apprised of certain legislation developments and reviewed with him the Agency's position on the foreign elections bill (S. 2239), the Ervin bill (S. 1688), the amendment to the Freedom of Information Act (H. R. 12471) and the age discrimination rider on the Fair Labor Standards Act amendments (H. R. 12435). I observed that our concern with respect to this legislation would appear to be shared by a number of Federal agencies but that often we are the only ones who appear to be registering concern and attempting to remedy the situation, which is difficult for us to do because it just is not tenable for us to get out in front on such legislation. Oliver said he welcomes our views and believes he could be helpful to us within OMB and asked that we send him whatever papers we had on the subjects discussed.

We also discussed the status of our retirement funding proposal and it is quite obvious that Oliver is interested in the possibility of some type of merger of our fund with the Civil Service retirement fund which would (1) eliminate the need for funding legislation, and (2) would reduce costs in the intelligence budget. Oliver is going to take informal soundings concerning the receptiveness of the Commission to such a possibility.

CRC, 5/20/2003

25X1

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25X1

Foot note

NEW YORK TIMES

DATE

19 MAR 74

PAGE

13

Supreme Court Action

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, March 18—The Supreme Court dismissed today an appeal by The Philadelphia Inquirer of a ruling denying its reporters access to state and city welfare rolls despite the Pennsylvania "right-to-know" law.

The newspaper had sought to obtain the names, addresses and amount of benefits for all welfare recipients, as part of an investigation of the high cost of the program and reported abuses by some applicants. State and city officials had refused to provide the information.

The high court unanimously left standing without opinion a ruling by the Pennsylvania Supreme Court that the newspaper, its executive editor and an urban affairs reporter did not have proper legal standing to sue under the law that gives an "adult resident" access to public records of any state agency.

The decision applies only to the Pennsylvania situation and does not necessarily bar papers elsewhere from obtaining welfare records. It suggests, however, how the Justices might rule in comparable cases involving other state laws.

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The Justices dismissed the Philadelphia newspaper's appeal summarily, on the basis of preliminary written statements from the parties without formally taking jurisdiction or hearing arguments. There was no opinion.

The Pennsylvania court also maintained that The Inquirer would not use the welfare information for "noncommercial" and "nonpolitical" purposes, as the right-to-know statute requires, and that the state's interest in protecting the privacy of welfare recipients outweighed the press's right to gather news.

Federal Information Act

In another decision, the high court declined to review a decision that established new procedures under which the courts will review requests by

citizens for access to government documents under the Freedom of Information Act. In general, the new rules make it harder for the Government to oppose such suits.

In one instance, Federal District Court had refused to force the Defense Department to make public its defense contractor audit manual, saying it would be like giving the home team's football playbook to the opponents. In another, the Government had resisted efforts to release civil service personnel evaluation reports.

The United States Court of

Appeals for the District of Columbia, reversing both decisions, said that the courts were being too rigid in deciding freedom of information suits and should examine detailed descriptions of documents being withheld, if not the documents themselves.

The two information act decisions handed down by the District of Columbia Circuit Court of Appeals last summer called for an end to "governmental obfuscation and mischaracterization" in suits by citizens for access to civil service and defense contractor documents.

Circuit Judge Malcolm R. Wilkey said the government repeatedly used the "tactical ploy" in such suits of automatically claiming "the broadest possible grounds for exemption for the greatest amount of information" sought by outsiders.

The 1966 law gave citizens the right to take government agencies to court over document secrecy but spelled out several categories of information that are exempt from disclosure, such as investigative and national security data.

To put an end to blanket, unsupported claims that infor-

mation is exempt, the lower court set guidelines for future cases. It said the government must specify in detail which parts of large documents must be kept confidential and explain how the government would suffer by selective disclosure.

"Courts will simply no longer accept conclusory and generalized allegations of exemptions," Judge Wilkey said.

Solicitor General Robert H. Bork petitioned for high court review. "The procedures of the court of appeals," he said, "attempt to control the way in which the government should conduct its litigation."

Yesterday's cases involved the attempts of American University law professor Robert G. Vaughn to see Civil Service Commission policy reports and of a Washington law firm to see a Defense Department contract policy manual. Those contests will now resume in U.S. District Court here under the new ground rules.

In other action: